

Emergency Bill No. 42-01  
Concerning: Air Quality Control -  
Revision  
Revised: Apr. 2, 2002 Draft No. 6  
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Ch. 6, Laws of Mont. Co. 2002

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin, Silverman, Praisner, Leggett, Dacek,  
and Denis, and at the request of the County Executive.

### **AN EMERGENCY ACT** to:

- (1) authorize the Department of Environmental Protection to protect ambient (outdoor) air quality and the indoor air quality in residential and non-residential properties;
- (2) repeal or modify certain air quality requirements to conform with State law and modern air quality control practices;
- (3) facilitate enforcement of County air quality control laws;
- (4) repeal the authority of the Board of Appeals to consider an appeal of an air quality control violation and allow direct appeal of certain agency decisions to a court; and
- (5) generally amend County law regarding air quality control.

By amending

Montgomery County Code  
Chapter 2, Administration  
Section 2-112

Chapter 3, Air Quality Control

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Section 2-112, as amended by Chapter 30 of the Laws of Montgomery County 2001, and Chapter 3 are amended as follows:**

**2-112. Jurisdiction.**

\* \* \*

(c) The Board has the following appellate jurisdiction:

The board must hear and decide each appeal taken under:	Those appeals involve:
* * *	* * *
[[Section 3-16]]	[[Air quality control]]
* * *	* * *

\* \* \*

**Chapter 3.**

**AIR QUALITY CONTROL.**

**3-1. Purpose of Chapter.**

(a) It is [hereby declared to be] the policy of the County to protect the County 's ambient air [resources of the county to the degree] quality as necessary [for the] to:

- (1) [Protection of] protect the [public] health, safety, comfort and well-being of [its citizens] the County's residents and businesses;
- (2) [Prevention of] prevent injury to plant and animal life and to property; and
- (3) [Protection of] protect the [comfort and convenience of the public and the protection of the] recreational resources of the [c]County.

(b) [In determining the ways and means to be required for reducing pollutant concentrations, matters of economics and private interests and

23 other factors shall be subordinate considerations, in general, to the  
24 necessity of achieving the standards for the protection of the public  
25 health.] It is the County's goal to protect and facilitate the  
26 improvement of the indoor air quality experienced by businesses and  
27 occupants of multi-tenant buildings.

28 (c) The Department must apply principles of sound environmental health  
29 management and use reasonably available air quality control technology  
30 to implement this Chapter.

31 **3-2. Definitions.**

32 [For the purposes of] In this [c]Chapter, the following words and phrases  
33 [shall] have the following meanings [respectively ascribed to them by this section]:

34 **Air pollutant:** Any substance [the emission of which] whose release into the  
35 atmosphere causes air pollution. [It] An air pollutant may be in the form of a  
36 smoke, gas, dust, **odor, particulate matter** or combinations of [these] smoke, gas,  
37 dust, odor, or particulate matter[, but is not limited to this enumeration].

38 **Air pollution:** The presence in the [outdoor] atmosphere of [one or more] any  
39 substances or combinations [thereof] of substances [such] whose character, [in such]  
40 quantities [and of such] or duration [as are or may tend] make those substances likely  
41 to [be injurious] pose a health hazard to humans, plants, or animals [life, or property],  
42 or [which] unreasonably interfere[s] with the [comfortable] use and enjoyment of  
43 [life or] property[, or with the conduct of business,]. The substances may be emitted  
44 as odors, solids, vapors, liquids, or gases from any single source or in combination  
45 with other sources.

46 **Air pollution episode:** A[n] recognized occurrence designated [recognized by  
47 a determination] by the [g]Governor of Maryland or the [s]Secretary of the state  
48 [department of health and mental hygiene] Department of the Environment [that the]

49 as an accumulation of ambient air pollutants [may attain, is attaining or has attained  
50 a level or] at levels [considered injurious] harmful to human health.

51 **Control equipment:** Any [equipment which has the function of controlling  
52 the emissions from any process, fuel-burning or refuse-burning equipment and thus  
53 reduces the creation of or the emission of or the emission of air pollutants into the  
54 atmosphere or both] device or equipment that prevents or reduces emissions.

55 **Department:** The [d]Department of [e]Environmental [p]Protection.

56 **Director:** The Director of the **Department** [of Environmental Protection] or  
57 [his designated agent] the Director's designee.

58 **Emission:** Any substance, other than water in an uncombined form,  
59 discharged [directly or indirectly] into the atmosphere, including [but not limited to]  
60 **odors, particulate matter,** vapors, [or] gases, or any combination [thereof and odors  
61 associated with them by means of stationary sources, equipment, materials handling,  
62 construction and other acts or processes ] of these substances.

63 **Excessive lodging:** A condition of farmland where embedding of the previous  
64 crop causes the normal use of harvesting, tillage, or planting equipment to be  
65 impossible or impracticable.

66 **[Fuel-burning equipment:** Any equipment, device or contrivance and all  
67 appurtenances thereto, including ducts, breeching, fuel-feeding equipment, ash  
68 removal equipment, combustion controls, stacks and chimneys, used in the process of  
69 burning fuel or other combustible materials for the primary purpose of producing  
70 heat or power by indirect heat transfer.]

71 **Incinerator:** Any equipment [,] or device [or contrivance] used [for the  
72 destruction of] to destroy garbage, rubbish or other wastes by burning [and all  
73 appurtenances thereof].

74 **[Indirect sources of pollution:** The category of sources of pollution, also  
75 described under state and federal laws and regulations as "complex sources," which

76 includes any facility, building, structure, highway, institution or combination thereof,  
 77 the construction, modification or use of which results or may result in the emission  
 78 from mobile source activities associated with it of air pollutants for which there is a  
 79 national standard.]

80 **Indoor air pollutant:** Any substance whose indoor presence causes **indoor**  
 81 **air pollution.** An **indoor air pollutant** may consist of particles such as dust, fibers,  
 82 asbestos, or radon progeny[[, or animal dander]]; gases such as formaldehyde, carbon  
 83 monoxide, mists, or bioaerosols; biological substances such as viruses, bacteria, fungi  
 84 or molds; or combination of substances.

85 **Indoor air pollution:** The indoor presence of any airborne substance, such as  
 86 particles, fumes, mists, gases, or vapors or combination of substances likely to pose a  
 87 health hazard to humans, plants, or animals or unreasonably interfere with the use  
 88 and enjoyment of residential or non-residential property, including the ordinary  
 89 conduct of business.

90 **Installation:** Any article, machine, or equipment[, or other contrivance],  
 91 including [but not limited to] **emission control equipment**, processing equipment,  
 92 manufacturing equipment, fuel burning equipment, incinerators or any equipment or  
 93 construction capable of generating, causing or reducing **emissions**.

94 **[Nuisance:** Environmental condition, intermittent or continuous, produced or  
 95 correctable by human agency, prejudicial to reasonable enjoyment of health, comfort  
 96 or safety of any individual or causing injury to damage to persons, property or the  
 97 conduct of business.]

98 **Odor:** The property of an **emission** that stimulates a **person's** sense of smell.

99 **Official fire:** A fire authorized by a government officer for the purposes listed  
 100 in this Chapter.

101 **Opacity:** [The state of a substance which renders it partially or wholly  
 102 impervious to rays of light so that the substance partially or wholly obscures an

103 observer's view.] The degree to which emissions reduce the transmission of light and  
 104 obscure the view of an object in the background.

105 **Open fire:** A fire in which any material is burned in the open or in a receptacle  
 106 other than a furnace, incinerator or other equipment [connected to a stack, which  
 107 equipment is constructed in accordance with and meets the] not in conformance with  
 108 the design requirements of the applicable building code of the [c]County [and] or the  
 109 air quality control regulations of the [s]State.

110 **Particulate matter:** Material other than water in uncombined form which is or  
 111 has been airborne and exists as a liquid or solid at standard conditions of temperature  
 112 [70°F] 25 degrees Celsius (77 degrees Fahrenheit) and pressure of [( ) 29.92 inches  
 113 (760 mm) [Hg)] mercury.

114 **Permit:** An air pollution control permit issued by the **Department** or the  
 115 [state department of health and mental hygiene] Maryland Department of the  
 116 Environment covering open burning, [and certain] **installation** [and equipment and  
 117 other sources which may cause emissions ], or operation of equipment with the  
 118 potential to emit air pollution.

119 **Person:** An[y] individual, group of individuals, partnership, firm, voluntary  
 120 association, public or private corporation, or an [association, governmental] agency  
 121 [or any other legal entity], or department of the County or of any federal, state, or  
 122 municipal government to the extent allowed under federal, state, or municipal law.

123 **Plan for compliance:** A schedule of actions designed to achieve compliance  
 124 with this [c]Chapter after a specified period of time submitted by a violator and  
 125 approved by the [d]**Director.**

126 **[Ringlemann chart:** A chart for grading the appearance, density or shade of  
 127 smoke as published with instructions for use by the United States Bureau of Mines,  
 128 in Information Circular 7718, dated August 1955. Any other method for grading

129 smoke which is approved by the state department of health and mental hygiene as the  
 130 equivalent of the Ringlemann Chart may be substituted therefor.]

131 **[Smoke:** Small gas-borne particles, other than water, in sufficient number to  
 132 be observable by sight.]

133 **Source:** [Any physical arrangement or structure which may emit or cause to be  
 134 emitted air pollutants. It includes, but is not limited to, stacks, chimneys, building  
 135 openings, open fires, vehicles, processes, equipment, structures and premises.] A  
 136 **person** or property that is contributing to **air pollution**.

137 **Unconfined source:** An **installation** that causes **emissions** that are not  
 138 enclosed in a stack, duct, hood, flue, or other conduit, but that escape into the  
 139 atmosphere through openings such as windows, vents, or doors, ill fitting closures, or  
 140 poorly maintained equipment.

141 **3-3. Administration.**

142 [It shall be the duty of the director of the department of environmental  
 143 protection to:]

144 [(a) Supervise the execution of all laws, rules and regulations pertaining to  
 145 air pollution as provided in this chapter;]

146 [(b) Conduct studies, investigations and research relating to air pollution and  
 147 its prevention, abatement and control;]

148 [(c) Issue such orders as may be necessary to effectuate the purposes of this  
 149 chapter and enforce the same by all appropriate administrative and  
 150 judicial proceedings;]

151 [(d) Make inspections and tests of existing and newly installed equipment  
 152 subject to this chapter to determine whether such equipment complies  
 153 with the standards set forth in the regulations adopted pursuant to this  
 154 Code;]

- 155 [(e) Investigate complaints of violations of the provisions of this chapter,  
 156 make inspections and observations of air pollution conditions and  
 157 maintain records of all such investigations, complaints, inspections and  
 158 observations;]
- 159 [(f) Approve or reject applications for permits, plans of compliance and  
 160 other documents required under provisions of this Code;]
- 161 [(g) Secure necessary scientific, technical, administrative and operational  
 162 services, including laboratory facilities, by contract or otherwise;]
- 163 [(h) Prepare and develop a comprehensive plan or plans in the county for the  
 164 prevention, abatement and control of air pollution;]
- 165 [(i) Advise, consult and cooperate with other local governmental units,  
 166 agencies of the state, industries, interstate or interlocal agencies and the  
 167 federal government and with interested persons and groups;]
- 168 [(j) Collect and disseminate information and conduct educational and  
 169 training programs relating to air pollution;]
- 170 [(k) Encourage voluntary cooperation by persons or affected groups to  
 171 achieve the purpose of this chapter;]
- 172 [(l) Receive and administer grants or other funds or gifts from public and  
 173 private agencies, including the state and federal governments, for the  
 174 purpose of carrying out any of the functions of this chapter;]
- 175 [(m) Do any and all acts which may be necessary for the successful  
 176 prosecution of the policy of this chapter and such other acts as may be  
 177 specifically enumerated herein;]
- 178 [(n) Promulgate rules and regulations subject to provisions in section 3-4  
 179 under which this law will be administered.]
- 180 (a) The **Director** must enforce this Chapter. The **Director** must advise,  
 181 consult, and cooperate with other local government units, State

182 agencies, interstate agencies, the federal government, private industries  
 183 and businesses, homeowners associations, and other interested persons  
 184 about air quality problems that affect human health.

185 (b) This Chapter does not waive any requirement of State or federal law.

186 **3-4. Regulations.**

187 [(a)] The [c]County [e]Executive may adopt regulations under method (2)  
 188 [of section 2A-15 of this Code, for] to implement this [c]Chapter. [Such]  
 189 [r]Regulations [shall] adopted under this Chapter must not conflict with, [nor] waive  
 190 any provisions of [this Code nor], or be less restrictive than [regulations currently  
 191 established and in effect as] any requirement[s] [of the state department of health and  
 192 mental hygiene] of State or federal law.

193 [(b)] Regulations adopted pursuant to provisions of this section shall provide  
 194 for but not be limited to the following:

- 195 (1) Control of particulate matter emissions from fuel burning  
 196 installations, grain drying installations, materials handling and  
 197 construction and other acts and installations;
- 198 (2) Control of gas, vapor, odor and volatile organic compound  
 199 emissions from fuel burning and other installations;
- 200 (3) Prohibition of certain incinerators and new fuel-burning  
 201 installations;
- 202 (4) Application fees at a rate not to exceed the cost of administering  
 203 the program.]

204 [(c)] Notwithstanding any other provisions of this section, the county  
 205 executive may adopt regulations, under method (2) of section 2A-15 of  
 206 this Code, regarding procedures for the issuance of permits for indirect  
 207 sources of pollution in accordance with applicable state and federal  
 208 regulations.]

- 209 **3-5. [Visible] Ambient air quality requirements for visible emissions.**
- 210 (a) **Generally.** [No person shall] A person must not cause [, suffer, allow]
- 211 or [permit] allow the discharge of any visible emission[s] from any
- 212 **installation** or building, other than water in an uncombined form, into
- 213 the atmosphere [which are visible to human observers].
- 214 (b) **Exceptions.** [(1)] Subsection (a) [shall] does not apply to any: [emissions
- 215 during the building of a new fire, cleaning of fires, soot blowing, start-
- 216 up, any process modification or adjustment or occasional cleaning of
- 217 control equipment, the shade or appearance of which is not darker than
- 218 No. 1 on the Ringelmann Smoke Chart or of such opacity as to obscure
- 219 an observer's view to a degree not greater than does smoke designated
- 220 as No. 1 on the Ringelmann Smoke Chart, for a period or periods
- 221 aggregating no more than four (4) minutes in any sixty (60) minutes.]
- 222 [(2) Subsection (a) shall not apply to emissions of the following:
- 223 a. From those incinerators that are to be phased out under
- 224 provisions of this chapter;]
- 225 (1) **Emission during start-up and process modifications or**
- 226 **adjustments, or occasional cleaning of control equipment, that is**
- 227 **not greater than 40 percent opacity for a period of not more than**
- 228 **6 consecutive minutes in any 60-minute period.**
- 229 (2) **Emission from a food preparation installation, such as a char-**
- 230 **broiler or pit barbecue, that operates at one location less than 15**
- 231 **days in any 365-day period, or that is not greater than 10 percent**
- 232 **opacity.**
- 233 (3) [b. From the burning of wood in fireplaces or used as residential]
- 234 **Emission caused by wood burning in a residential fireplace or**

235 wood stove, or **emission** for recreational purposes such as a  
 236 campfire.

237 (4) [c.] **Emission** [F]from an open fire[s] (except a salamander[s])  
 238 [permitted under provisions of] that complies with this  
 239 [c]Chapter.

240 **[3-6. Control and prohibition of open fires.]**

241 [(a) **Official fires.** Open fires may be set with due notice to, but without  
 242 prior approval from the department in performance of an official duty of  
 243 any public officer if the fire is necessary for one or more of the  
 244 following reasons or purposes:

245 (1) For the prevention of a fire hazard which cannot be abated by  
 246 other means.

247 (2) Except during the existence of an air pollution episode, for the  
 248 instruction of public fire fighters or industrial employees under  
 249 supervision of the director, department of fire and rescue  
 250 services.

251 (3) For the protection of the public health, safety or welfare.]

252 [(b) **Open fires.** Except during the existence of an air pollution episode, the  
 253 following open fires are allowed within the county without prior  
 254 approval from the department; provided, that they otherwise conform  
 255 with other fire control laws and regulations; and provided, that no  
 256 nuisance is created:

257 (1) **Leaves.** In those areas where no provision is made for public  
 258 collection of leaves, the open burning of leaves originating on the  
 259 premises by householders is permitted.

260 (2) **Household Trash.** In those areas where no provision is made for  
 261 public collection of refuse, burning of ordinary household trash

- 262 (Incinerator Institute of America waste types 0 and 1 only)  
263 originating on the premises, excluding commercial  
264 establishments, by householders is permitted; provided, that:
- 265 a. The fires are located no closer than three hundred (300)  
266 feet from any neighboring habitable dwelling or place  
267 where people work or congregate;
- 268 b. Materials are not burned which create dense smoke (emissions of  
269 an opacity or darkness greater than No. 1 on the Ringelmann  
270 Smoke Chart.)
- 271 (3) **Cooking.** Fires may be used for the cooking of food; provided,  
272 that visible emissions are not greater than No. 1 on the  
273 Ringelmann Smoke Chart and no nuisance is created.
- 274 (4) **Salamanders.** Salamanders or other devices fired with propane  
275 gas or No. 2 fuel oil may be used for heating by construction or  
276 other workers; provided, that no visible emissions are created.
- 277 (5) **Agricultural Operations.** Fires may be set in the course of  
278 agricultural operations; provided, that visible emissions are not  
279 greater than No. 1 on the Ringelmann Smoke Chart and no  
280 nuisance is created and prior notice is given to the department.
- 281 (6) **Recreational Purposes.** Open fires may be set for recreational  
282 purposes such as campfires; provided, that visible emissions are  
283 not greater than No. 1 on the Ringelmann Smoke Chart and no  
284 nuisance is created.
- 285 (7) **Explosive Containers.** Empty boxes and fiber packing materials  
286 which have previously contained high explosives may be burned  
287 at an isolated location more than one hundred (100) feet from any  
288 occupied building or structure or public street or road and no

289 person shall be closer than one hundred (100) feet of the fire once  
290 burning has begun.]

291 [(c) **Outside of buildings.** Except as provided by paragraphs (a) and (b) of  
292 this section, no person shall in the county burn any refuse or plant life,  
293 in any public or private place outside of any building unless he shall  
294 have first obtained a permit from the department for such activity. The  
295 duration of such permits shall be established by the director. The  
296 department shall issue such permits only when:

- 297 (1) There is no practical alternate method to dispose of the material  
298 to be burned or to conduct the desired activity.
- 299 (2) No hazardous condition or nuisance will be created.
- 300 (3) No burning will be done within five hundred (500) yards of one  
301 (1) or more occupied buildings or a heavily traveled public  
302 roadway.
- 303 (4) Fire control laws or regulations of other governmental agencies  
304 will not be violated.
- 305 (5) No materials which provide smoke, in excess of No. 1 on the  
306 Ringelmann Smoke Chart, when burned, including but not  
307 limited to tires and roofing material, will be burned.
- 308 (6) Such other conditions as the director may impose to minimize  
309 creation of smoke, to prevent nuisances and air pollution and to  
310 protect the health, safety, comfort and property of any persons  
311 shall be satisfied.
- 312 (7) The material to be burned shall be waste matter of the premises  
313 on which it is to be burned.
- 314 (8) Methods of disposal by burning acceptable to the director may be  
315 approved for use when distance limitations cannot be met.]

316 [(d) **Extinguishing fires in violation.** Fires started in violation of this  
 317 section shall be promptly extinguished by the person responsible for the  
 318 same upon notice by a duly authorized agent of the department. This  
 319 shall not be considered an exclusive remedy.]

320 **3-6. Ambient air quality requirements for particulate matter from**  
 321 **unconfined sources.**

322 A person must not cause or allow emissions from an unconfined source without  
 323 taking reasonable precautions to prevent particulate matter from becoming airborne.  
 324 When the Director orders, these precautions must include installing and using hoods,  
 325 fans, and dust collectors to enclose, capture, and vent emissions.

326 **[3-7. Permits for certain equipment.]**

327 [(a) **Required generally.** Subject to provisions found in section 3-9 of this  
 328 chapter, it shall be unlawful within the county for any person to either  
 329 build, erect, alter, replace, store, operate, sell, rent or use any source,  
 330 article, machines, equipment, substance or other contrivance which is  
 331 the subject of regulations promulgated in accordance with section 3-4(a)  
 332 of this chapter or by the Maryland State Department of Health and  
 333 Mental Hygiene, the use of which may directly or indirectly cause  
 334 emissions into the air, without having first obtained the appropriate  
 335 Montgomery County air pollution control permit to do so. This  
 336 requirement shall be deemed satisfied when any one of the following is  
 337 in effect:

338 (1) A currently valid permit to construct or operate has been issued  
 339 by the state department of health and mental hygiene for the  
 340 subject installation or equipment.

341 (2) A currently valid conditional permit has been issued by the state  
 342 department of health and mental hygiene for the subject  
 343 installation or equipment.]

344 [(b) **Exemptions.** No permit shall be required for installation of equipment  
 345 specifically exempted under regulations issued by the state department  
 346 of health and mental hygiene for the subject installation or equipment.]

347 [(c) **Compliance with regulations.** The mere existence of a valid permit  
 348 does not relieve a person of his duty to comply with any conditions  
 349 contained in such permit and other county, state and federal air pollution  
 350 control or fire control regulations.]

351 [(d) **Change of ownership.** A change of ownership shall terminate all  
 352 permits issued for a particular installation or equipment. The new owner  
 353 shall make application for the appropriate permit within thirty (30) days  
 354 of the change of ownership.]

355 **3-7. Ambient air quality requirements for particulate matter from**  
 356 **materials handling and construction.**

357 (a) A person must not cause or allow any material to be handled, transported,  
 358 or stored, or any building or road to be constructed, altered, repaired, or  
 359 demolished, without taking reasonable precautions to prevent **particulate**  
 360 **matter** from becoming airborne.

361 (b) Unless the **Director** finds otherwise in a particular situation, reasonable  
 362 precautions include:

363 (1) using water or chemicals to control dust when demolishing a  
 364 building or structure, undertaking construction operations, grading a  
 365 road, or clearing land;

366 (2) applying asphalt, water, or suitable chemicals on a dirt road,  
 367 materials stockpile, or other surface that can create airborne dust;

- 368           (3) installing and using hoods, fans, and dust collectors to enclose and  
369           vent the handling of dusty materials, and employing reasonable  
370           containment methods to prevent the release of **particulate matter**  
371           during sandblasting or similar operations;
- 372           (4) covering each open-bodied vehicle used to transport any material  
373           likely to create **air pollution** at all times when the vehicle is moving;
- 374           (5) paving a roadway and maintaining it in clean condition; and
- 375           (6) promptly removing earth or other dust-producing material from a  
376           paved street to which the material was transported by truck, earth  
377           moving equipment, or water erosion.

378 **[3-8. Applications for permits.]**

379 [(a) **Generally.** Applications for the air pollution control permits described  
380 in section 3-7 shall be made to the department on forms provided by the  
381 department. The department shall require such information and details  
382 regarding the installation as it considers necessary to determine whether  
383 the installation to operate is in compliance with county, state and federal  
384 air pollution control regulations and that the installation incorporates  
385 advances in the technology of air pollution control developed for the  
386 kind and amount of emissions of the applicant's installation.]

387 [(b) **Denial of application.** Whenever it shall appear to the department that  
388 the operation or construction of an installation for which a permit is  
389 applied will result in a violation of any county, state or federal air  
390 pollution control regulations or contravention of applicable ambient air  
391 quality standards, an order shall be entered denying the permit and  
392 setting forth the reasons thereof. The department shall not accept a  
393 further application unless the applicant has complied with the objections  
394 specified by the department as its reasons for denial of the permit or

395 submitted satisfactory evidence demonstrating that a particular  
 396 requirement cannot be met immediately and submitted to the  
 397 department an acceptable plan of compliance.]

398 **3-8. Control or prohibition of open fires.**

399 (a) **Official fires.** A public officer may set an **open fire** with due notice to,  
 400 but without prior approval from, the **Director** if the public officer is  
 401 performing an official duty and the fire is necessary to:

- 402 (1) prevent a fire hazard which cannot be abated by other means;  
 403 (2) instruct public fire fighters or industrial employees under  
 404 supervision of the Fire Administrator if the instruction does not  
 405 occur during an **air pollution episode** and the fires do not contain  
 406 asphaltic or asbestos materials; or  
 407 (3) protect the public health, safety or welfare.

408 (b) **Open fires.** Except during an **air pollution episode**, the following **open**  
 409 **fires** are allowed without prior approval of the **Director** if the fire does  
 410 not otherwise violate any other law or regulation:

- 411 (1) **Cooking.** A **person** may use a fire to cook food if the **person**  
 412 uses an outdoor cooking apparatus approved for use by a  
 413 nationally recognized standards organization, such as  
 414 Underwriters Laboratory, and the **person** does not create a  
 415 nuisance.  
 416 (2) **Salamanders.** Construction workers and other outdoor workers  
 417 may use a salamander or other device fired with propane gas or  
 418 No. 2 fuel oil for heating if the device does not create visible  
 419 **emissions.**  
 420 (3) **Recreational purposes.** A **person** may set an **open fire**, such as  
 421 a campfire, for recreational purposes if the fire does not produce

422 visible **emissions** that exceed 20 percent **opacity** for a total of  
423 more than 3 minutes in any 60-minute period and is not larger  
424 than 3 feet in diameter.

425 (c) **Permitted fires.** Except as provided in subsections (a) and (b), a  
426 **person** must not burn any refuse or plant life outside of a building  
427 unless the **person** has obtained a **permit** from the **Director**. The  
428 **Director** must limit the duration of the **permit**. The **Director** may  
429 issue the **permit** for any of the following reasons or purposes:

430 (1) **Agricultural open burning.** A **person** may set a fire during  
431 agricultural operations if the fire complies with subsection (d)  
432 and the **person** obtains an agricultural burning **permit** before  
433 setting the fire. The **Department** may grant a **permit** to burn  
434 **excessive lodging** or destroy diseased crops and other vegetation  
435 originating on the applicant's property only:

436 (A) on a property that is agriculturally assessed for property tax  
437 purposes; and

438 (B) if the burning is necessary to maintain agricultural land in  
439 production.

440 (2) **Ceremonial burning.** A **person** may set fires for a ceremonial  
441 purpose.

442 (3) **Disaster rubbish.** A **person** may burn rubbish, including  
443 landscape waste, during a community disaster if the County  
444 Executive has officially declared a state of emergency.

445 (4) **No alternative.** A **person** may burn any material if the **Director**  
446 finds that there is no practical alternative way to dispose of or  
447 store the material more safely.

448        (d) **Conditions.** The **Director** may impose any condition on an open  
 449        burning permit to prevent **air pollution** or protect the health, safety,  
 450        comfort and property of **persons**. An **open fire** must at all times be  
 451        attended by the permittee or the permittee's agent who has the burning  
 452        **permit** in possession during the burning. The **Director** must not grant a  
 453        **permit** if the intended activity would:

- 454        (1) create a hazardous condition;  
 455        (2) be conducted during an **air pollution episode** or other burning  
 456        prohibition period declared by the Governor or the Secretary of  
 457        the Maryland Department of the Environment;  
 458        (3) be conducted within 500 yards of an occupied building or a  
 459        heavily traveled public road, walkway, path, or other facility used  
 460        by the public;  
 461        (4) violate any other law or regulation;  
 462        (5) create visible **emissions** whose **opacity** exceeds 20 percent for  
 463        more than a total of 3 minutes in any consecutive 60-minute  
 464        period; or  
 465        (6) include the burning of leaves, brush, other vegetation, or  
 466        household trash.

467        (e) **Permit denial.** The **Director** may deny a request for an open burning  
 468        **permit** if:

- 469        (1) the applicant has not shown that the applicant can comply with  
 470        this Chapter and any applicable State or federal **air pollution**  
 471        control law; or  
 472        (2) the **Director** finds, based on the applicant's history, that the  
 473        applicant is not likely to comply with all applicable **County,**  
 474        State, and federal **air pollution** control laws.

475 (f) **Permit revocation or suspension.** The **Director** may revoke, suspend,  
476 or modify a **permit** granted under this Section if the **Director** finds that  
477 the permittee has violated any term or condition of the **permit**. Notice  
478 of any proposed revocation, suspension, or modification must be in  
479 writing, include the reason for the decision, and give the permittee an  
480 opportunity for a hearing. A request for a hearing does not stay the  
481 **Director's action.**

482 (g) **Extinguishing fires in violation.** A **person** responsible for starting a  
483 fire that violates this Section must promptly extinguish the fire after  
484 receiving notice from the **Department**. The notice to extinguish the fire  
485 is not an exclusive remedy.

486 **[3-9. Plan of compliance.]**

487 [When an applicant has adequately demonstrated to the department that  
488 compliance with this chapter and regulations adopted thereto cannot be effectively  
489 and immediately made, the director shall have authority to grant permits for the  
490 installation or operation of noncomplying equipment, but only in the event that all  
491 necessary steps have been taken to secure compliance with this chapter. Such steps  
492 shall include the requirement that the applicant file with the department a plan of  
493 compliance which shall include a schedule of actions approved by the director for the  
494 control of emissions. Permission for noncompliance shall be granted for a period of  
495 no longer than two (2) years, during which time the applicant shall file periodic  
496 progress reports as specified by the department. At the end of the period granted, the  
497 applicant shall be deemed in violation of this chapter, unless this period is further  
498 extended by the board of appeals upon proper showing of an attempt to comply and  
499 its approval of a plan of compliance.]

500 **3-9. Ambient air quality requirements for odors.**

501 (a) A person must not cause or allow the emission into the atmosphere of  
502 any gas, vapor, or particulate matter beyond the person's property  
503 line or unit if a resulting odor creates air pollution.

504 (b) The Director may issue a citation for violating subsection (a) if the  
505 Director:

506 (1) witnesses the violation; or

507 (2) receives complaints from at least 2 individuals who have personal  
508 knowledge of the air pollution odor.

509 **[3-10. Abatement orders.]**

510 [(a) Upon finding that a person is violating a provision of this chapter, the  
511 director or an authorized fire official may, at his discretion, issue an  
512 order directing such person to cease such violation. Such order shall be  
513 in writing and shall be served upon the person to whom it is directed,  
514 either by mail or by personal delivery. If such person cannot be located  
515 within the county after reasonable effort, service shall be made by  
516 certified mail at his last known address or by posting the order upon the  
517 premises. Nothing in this section shall be construed to prohibit the  
518 director or the fire marshal from dispensing with the provisions of this  
519 section and proceeding directly under sections 3-11 and 3-17 of this  
520 Code.]

521 [(b) When the director determines, either upon his own investigation or upon  
522 petition of those affected, that a nuisance as defined by this chapter  
523 exists and effects at least thirty (30) percent of a sample of people  
524 exposed to it in their usual places of occupancy, the sample size to be at  
525 least twenty (20) people or seventy-five (75) percent of those exposed if  
526 fewer than twenty (20) people are exposed, he shall immediately issue

527 an abatement order to the person responsible for the condition in  
 528 accordance with subsection (a) herein.]

529 **3-10. Control and prohibition of indoor air pollution.**

530 (a) **A person must not cause or allow the emission of indoor air**  
 531 **pollutants beyond the person's property line in a manner that creates**  
 532 **indoor air pollution.**

533 (b) Subsection (a) does not apply to:

534 (1) the residential use of personal hygiene products;

535 (2) smoking in [[non-restricted areas]] a private home; or

536 (3) residential cooking odors.

537 (c) In this Section, "property line" means the boundary of a residential or  
 538 non-residential area that a person legally uses or owns. For a property  
 539 divided into more than one legal unit, such as multi-family housing or a  
 540 multi-tenant commercial property, "property line" also includes any  
 541 boundary between a unit and a common area or between units.

542 (d) **The Director may issue a citation for violating this Section if the**  
 543 **Director:**

544 (1) witnesses the violation; or

545 (2) receives complaints from at least 2 individuals who have personal  
 546 knowledge of the indoor air pollution.

547 **[3-11. Revocation of permit.]**

548 [The department shall issue an order suspending or revoking any permit for  
 549 violations of this chapter and regulations adopted pursuant thereto, state or any  
 550 federal air pollution control laws or regulations, state or county fire control laws or an  
 551 approved plan of compliance. The department shall revoke any permit for violations  
 552 or for any false statement in the application or because of conditions revealed by such  
 553 application or any report, record or inspection or any other means which would

554 warrant refusal of a permit on any original application. An order suspending or  
 555 revoking a permit shall be served in person or by certified mail upon the permit  
 556 holder and shall be final unless the holder appeals such order as provided in section  
 557 3-16.]

558 **3-11. Determining compliance.**

559 (a) **Compliance methods.** The **Director** may conduct testing or require a  
 560 property owner to conduct testing to determine compliance with this  
 561 Chapter in response to a complaint.

562 (b) **Manner of testing.** A property owner must conduct all tests in a  
 563 manner, and before the deadline, set by the **Director** and submit a  
 564 detailed report of all test results to the **Director** within 15 days after the  
 565 testing is complete unless the **Director** grants an extension. Each test  
 566 must be performed by a **person** qualified to conduct the test, as  
 567 determined by the **Director**.

568 **[3-12. Testing and monitoring.]**

569 [(a) **Methods.** Emission tests shall be conducted in accordance with  
 570 recognized standards and methods of measurement. Methods found in  
 571 the American Society of Mechanical Engineering (ASME) Power Test  
 572 Code 27-1957, American Society for Testing Materials (ASTM)  
 573 D2928-70 and the specifications of the U.S. Environmental Protection  
 574 Agency shall be used, but these may be modified or adjusted by the  
 575 department to suit specific sampling conditions or needs based upon  
 576 good practice, judgment and experience. Measurements taken in stacks  
 577 at point beyond the installed control equipment shall be deemed to be a  
 578 measurement of emission.]

579 [(b) **Manner.** The department is hereby authorized to conduct or cause to be  
 580 conducted any test or tests to determine compliance with this chapter or

581 regulations adopted thereto. All tests shall be conducted in a manner  
582 determined by the director and a complete, detailed test report of such  
583 test or tests shall be submitted to him in timely fashion. When tests are  
584 taken by the owner or the owner's independent testers, the director shall  
585 require that such tests be conducted by reputable, qualified personnel, as  
586 determined by the director or representatives of the department.]

587 [(c) **Facilities and access.** It shall be the responsibility of the owner or  
588 operator of the equipment tested to provide, at the owner's expense,  
589 utilities, facilities and reasonable and necessary openings in the system  
590 or stack and safe and easy access thereto, to permit samples and  
591 measurements to be taken. All new sources of air pollutants created  
592 after the effective date of this law may be required by the director to  
593 provide utilities, facilities and adequate openings in the system or stack,  
594 and safe and easy access thereto, to permit measurements and samples  
595 to be taken.]

596 [(d) **Cost.** If emission tests conducted as the result of the action of the  
597 director substantiate that a violation exists, the person or persons  
598 responsible for the violation shall be responsible for paying all attendant  
599 costs for conducting such tests. If such tests do not show that a  
600 violation exists, then the county shall be responsible for paying all costs  
601 for conducting such tests. In no event shall the county assume costs of  
602 providing facilities, utilities and access for such testing. The cost of  
603 emission tests required by the director on newly installed equipment for  
604 the issuance of the initial permit to install and operate shall be the  
605 owner's regardless of the results. When the person responsible elects to  
606 conduct his own tests, then the person so electing shall pay for the test

607 or tests notwithstanding other provisions of this section and irrespective  
608 of the result.]

609 [(e) **Data.** Emission data secured as the result of this regulation or other  
610 provisions of law shall be correlated with applicable emission  
611 limitations or other control measures and shall be available for public  
612 inspection during regular business hours or by appointment during other  
613 hours at the offices of the department. Information other than emission  
614 data which relates to production, sales figures or processes of any owner  
615 or operator shall not be disclosed publicly upon finding by the director  
616 that to do so will result in a significant and adverse effect upon the  
617 competitive position of such owner or operator, except in or following  
618 public hearing or except as necessary to protect the public health, safety  
619 or well-being, unless such owner or operator shall expressly agree to  
620 their publication or availability to the general public.]

621 **3-12. Emergency provisions.**

622 (a) Notwithstanding this Chapter or any other law, if the **Director** finds  
623 that a **person** is causing or contributing to **air pollution** and that the  
624 pollution creates an emergency that requires immediate action to  
625 protect the public health or safety, the **Director** must order the **person**  
626 to immediately reduce or stop the **air pollution**. That **person** must  
627 immediately comply with the **Director**'s order.

628 (b) If the Governor or the Secretary of the Maryland Department of the  
629 Environment declares an **air pollution episode**, the **Director** may take  
630 any action authorized under State law to protect the public health or  
631 safety.

632 **[3-13. Circumvention and right of entry.]**

633 [(a) No person shall build, erect, install or use any article, machine,  
634 equipment or other contrivance, the sole purpose of which is to dilute or  
635 conceal an emission without resulting in a reduction in the total  
636 emission of air pollutants nor shall a person do any noncorrective thing  
637 nor commit any noncorrective act with the intent to distort test emission  
638 results.]

639 [(b) Any person who in any manner hinders, obstructs, delays, resists,  
640 prevents or in any manner interferes or attempts to interfere with the  
641 department or its representatives in the performance of any duty or shall  
642 refuse to permit the department or its representative to perform their  
643 duty by refusing them entrance at reasonable hours to any premises in  
644 which the provisions of the chapter are being violated or are suspected  
645 by the director of being violated or refuse to permit testing or permit the  
646 inspection or examination of such premises for the purpose of  
647 enforcement of the provisions of this chapter and regulations adopted  
648 thereto shall be subject to revocation by the director of all permits  
649 issued pursuant to this chapter to him and such other action as may be  
650 provided at law or by provisions of this Code.]

651 [(c) (1) For the purpose of developing or assisting in the development of  
652 any implementation plan, standard of performance, emission  
653 standard or the enforcement of any regulation contained herein,  
654 each supplier of residual and distillate fuel oil in the county is  
655 hereby required to file an annual report with the director, which  
656 report is due on July 1 of each year, listing all customers of that  
657 supplier and showing therewith the fuel types, grades and

658 quantities purchased or consumed by each customer thereof  
659 during the twelve (12) months immediately preceding.

660 (2) The director is hereby authorized to waive the requirements of  
661 the foregoing subsection as to any supplier or suppliers upon  
662 written agreement by that supplier that it will, within ten (10)  
663 days of receipt of a written request by the director, furnish such  
664 information as set forth in the preceding section as he deems  
665 necessary. All information obtained under this or the preceding  
666 section shall be entitled to protection as trade secrets and the  
667 department shall keep such information confidential.]

668 **3-13. Enforcement and Penalties.**

- 669 (a) The **Director** may enter a non-residential site during normal business  
670 hours or at any other reasonable time to inspect, investigate, or monitor  
671 activities subject to this Chapter. If the **person** in charge of the site does  
672 not consent to an entry by the **Director**, the **Director** must obtain an  
673 administrative search warrant from a court by satisfying reasonable  
674 statutory or administrative standards for conducting an inspection.
- 675 (b) The **Director** may, with the consent of the owner or occupant, enter a  
676 private dwelling at any reasonable time to inspect, investigate, or  
677 monitor activities subject to this Chapter. If the owner or occupant of  
678 the residence does not consent to an entry by the **Director**, the **Director**  
679 may obtain an administrative search warrant from a court by showing  
680 that reasonable legislative or administrative standards for conducting an  
681 area inspection have been satisfied.
- 682 (c) A **person** must not hinder, prevent, or unreasonably refuse to permit a  
683 lawful inspection, investigation, or monitoring under this Chapter.

- 684           (d)    The **Director**, the Fire Administrator, or the Administrator’s designee  
685                   may issue a notice of violation, corrective order, stop-work order, or  
686                   civil citation to any **person** who causes or allows a violation of this  
687                   Chapter.
- 688           (e)    A **person** who causes or allows a violation of this Chapter must submit  
689                   a **plan for compliance** if required under a notice of violation or  
690                   corrective order. The **plan** [[for compliance]] must include a schedule  
691                   to correct the violation. The **Director** must approve [[any]] or  
692                   disapprove the **plan** [[for compliance]] and any amendment to an  
693                   approved **plan**.
- 694           (f)    The **Director** may issue a stop-work order to any **person** who violates  
695                   this Chapter in connection with an activity conducted under a building  
696                   **permit** issued under Chapter 8 or a sediment control **permit** issued  
697                   under Chapter 19.
- 698           (g)    Any violation of this Chapter is a Class A violation. Each day a  
699                   violation continues is a separate offense.
- 700           (h)    In addition to any other remedy allowed by law, the **Department** may  
701                   seek injunctive or other appropriate judicial relief to prevent or stop a  
702                   violation of this Chapter.
- 703   **[3-14.    Emergency provisions.]**
- 704           [(a)   Notwithstanding the provisions of this chapter or any other provision of  
705                   law, if the director finds that any person is causing or contributing to air  
706                   pollution and that such pollution creates an emergency which requires  
707                   immediate action to protect the public health or safety, he shall order  
708                   such person to reduce or discontinue immediately the air pollution and  
709                   such order shall be complied with immediately.]

710 [(b) Whenever an air pollution episode is declared by the secretary of the  
 711 state department of health and mental hygiene or the governor, the  
 712 director shall have the authority to take such action as prescribed under  
 713 state regulations governing the control of air pollution or as necessary to  
 714 protect the public health or safety.]

715 **3-14. Appeals.**

716 (a) A person aggrieved by an action taken or an order issued under this  
 717 Chapter may seek reconsideration by filing a written request with the  
 718 Director within 10 days after the action or order. The request must state  
 719 the date and nature of the action or order, the remedy requested, and  
 720 why the Director should grant the request. Within 10 days after  
 721 receiving the request, the Director must:

722 (1) issue a written decision on the request for reconsideration if the  
 723 Director finds no material facts in dispute; or

724 (2) notify the person in writing of any material facts in dispute and:

725 (A) establish a deadline of not more than 30 additional days for  
 726 the Department to resolve the dispute and the Director to  
 727 issue a written decision on the request for reconsideration;

728 or

729 (B) refer the matter to a hearing officer under Article I of  
 730 Chapter 2A.

731 (b) A request for reconsideration does not stay the action or order unless the  
 732 Director grants a stay. The Director's decision on a request for  
 733 reconsideration is a final decision.

734 (c) A person aggrieved by a final decision of the Director under this  
 735 Chapter may [[and]] appeal the action or order under [[the procedures in  
 736 Article I of Chapter 2A. A request for reconsideration does not stay the

737 action or order unless the **Director** or other decision maker grants a  
 738 stay.]] Section 2A-11.

739 **[3-15. Prima facie evidence of unlawful emissions.]**

740 [In any hearing of the district court for the county or any court of competent  
 741 jurisdiction, the fact of operation without a valid permit, together with testimony as to  
 742 ownership or responsibility from the records of the department shall be prima facie  
 743 evidence of unlawful emissions and that the equipment for which the permit is not in  
 744 effect is being operated in violation of the provisions of this chapter and regulations  
 745 enacted pursuant thereto.]

746 **[3-16. Appeals.]**

747 [Any person aggrieved by an order issued under this Chapter may appeal  
 748 within 10 days from such order to the County Board of Appeals under Section 2-  
 749 112(a). Such appeal does not stay execution of the order more than 10 days, unless  
 750 the Board of Appeals grants a stay upon application of the person filing the appeal.]

751 **[3-17. Violations, penalties and liabilities.]**

752 [Failure to comply with any provision of this chapter shall constitute a class A  
 753 violation as set forth in section 1-19 of chapter 1 of the County Code.]

754 **Sec. 2. Transition.**

755 Until superseded, an Executive Regulation issued under Chapter 3 before the  
 756 effective date of this Act remains in effect to the extent the regulation is consistent  
 757 with this Act. This Act does not apply to a violation of Chapter 3 that occurred  
 758 before this Act took effect.

759 **Sec. 3. Emergency Effective Date.**

760 The Council declares that an emergency exists and that this legislation is  
 761 necessary for the immediate protection of the public health and safety. This Act  
 762 takes effect on the date on which it becomes law.

763 *Approved:*

764 /S/

April 2, 2002

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Steven A. Silverman, President, County Council

Date

765 *Approved:*

766 /S/

April 11, 2002

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Douglas M. Duncan, County Executive

Date

767 *This is a correct copy of Council action.*

768 /S/

April 15, 2002

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Mary A. Edgar, CMC, Clerk of the Council

Date